

EXHIBIT A

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18 Attorneys for Defendant
19 HARBOR FREIGHT TOOLS USA, INC.

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

15 GARY L. SMITH, JR., on behalf of
16 himself and all others similarly situated,

17 Plaintiff,

18 v.

19 HARBOR FREIGHT TOOLS USA,
20 INC.

21 Defendant.

Case No. CV13-6262 JFW (VBKx)

**DECLARATION OF AUTUMN
CLEMMENS IN SUPPORT OF
DEFENDANT'S OPPOSITION TO
PLAINTIFFS' MOTION FOR CLASS
CERTIFICATION**

Date: January 13, 2014
Time: 1:30 pm

Complaint Filed: August 27, 2013
Judge: Hon. John F. Walters

DECLARATION OF AUTUMN CLEMMENS

I, Autumn Clemmens, declare as follows:

1. I am over the age of eighteen. I have personal knowledge of the facts contained within the following paragraphs, and could and would competently testify hereto if called as a witness in a court of law.

2. I was the HR Administrator Supervisor at Harbor Freight Tools USA, Inc. ("HFT"). I held this position from August 25, 2011 through October 21, 2013. In my capacity as HR Administrator Supervisor, I have personal knowledge and experience with HFT's job application processes and background check procedures. I also have personal knowledge regarding the circumstances of Gary Smith's job application in 2011.

3. Each HFT store has a Store Manager, who is the highest-ranking employee at the store, and has ultimate responsibility for virtually all aspects of the store's overall performance. (Assistant Store Managers (ASMs) are responsible for the store in the Store Manager's absence, and also participate in hiring activities at the direction of the Store Manager or in the Store Manager's absence.) The Store Managers (and ASMs) at HFT have the ultimate authority to hire the retail associates who work at their stores. Store Managers (and ASMs) also have responsibility for numerous aspects of the hiring process, including reviewing and evaluating job applications, interviewing applicants, and selecting which candidate to extend an offer to. One aspect of the hiring process for which HFT Store Managers work with and rely on Human Resources is the company's background check process. Before a manager can extend a job offer to a candidate, the manager must first confirm that person has cleared the company's background checks — which includes a background check under the Fair Credit Reporting Act (FCRA). From in or about August 2002 to June 2012 HFT used a company called A-Check American, Inc. (A-Check) to run certain background checks. From June 2012 to present, the company has used ADP to run certain background checks. ADP uses a different FCRA

1 authorization form than that which Plaintiff Gary Smith (Smith) received.

2 4. While a potential job candidate at a store must first clear a background
3 check before a job offer may be extended, a manager can always decide, in his or her
4 discretion, to fill an open position with a different candidate who has already cleared
5 the background check process. If that happens, the manager simply accesses the
6 company's electronic records and job order forms, and "rejects" any candidates for
7 whom the manager did not make an offer but whose application is still pending. Such
8 was the case for Gary Smith.

9 5. I've had an opportunity to review documents regarding Gary Smith's
10 application since the filing of this lawsuit. What I was able to confirm and recall is that
11 Smith previously applied for employment with HFT in 2011 as a retail warehouse
12 associate at HFT's Huntington Park store, Store 0373. In conjunction with his
13 application for employment, Smith signed an authorization form dated 1028-11 for a
14 background check under the Fair Credit Reporting Act (FCRA). Per company policy
15 and practice, the hiring manager at the store to which Smith applied forwarded
16 Smith's authorization to Human Resources for background checks. A redacted copy
17 of Smith's background report showing the "submit" date of 11-7-11 is attached to this
18 Declaration as Exhibit A.

19 6. I further discovered in reviewing company records that on November 4,
20 2011 — e.g., after the manager submitted Smith's paperwork for a background check
21 but before the background checks were actually run — the manager "rejected" Smith
22 as an applicant. A true and accurate copy of that "job order" report is attached hereto
23 as Exhibit B. It is my understanding that the hiring manager found better qualified
24 candidates to fulfill the job order (candidates who had already cleared background
25 checks) and thus "rejected" Smith because the position(s) were already filled as of
26 November 4, 2011.

27 7. Since HFT's third-party vendor, A-Check, was not privy to the Store
28 Manager's ultimate hiring decision on 11-4-11, A-Check ran Smith's background

1 check on 11-7-11, and apparently issued various notices based upon the results of it.
2 Such notices had nothing to do with the actual hiring decision, which occurred
3 before A-Check ever ran Smith's background report.

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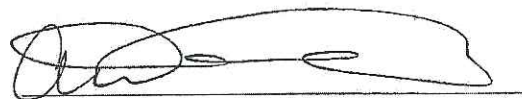
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I declare under penalty of perjury under the laws of the United States of America that the foregoing paragraphs are true and correct to the best of my own personal knowledge.

Dated: December 20, 2013



Autumn Clemmens, Declarant

EXHIBIT A



P.O. Box 5615
Riverside, CA 92517 USA
Call Toll free: 877-345-2021
Call Direct: 951-750-1501
Fax Toll free: 877-278-2021
Fax Direct: 951-750-1301

Confidential Background Report

Report Subject: GARY L. SMITH
File Number: WA01333351

Report Subject: GARY L. SMITH**REDACTED****Date of Birth:** 05/18/xxxx**SSN / GOV ID:** xxx-xx-7651 IS VALID**Report Status:** CLOSED**ONLINE PICKUP**

Prepared for: IRENE LOPEZ
HARBOR FREIGHT TOOLS
26541 AGOURA RD
CALABASAS, CA 91302
USA USA

Site Number: HARF001-0000**Telephone:** 818-836-5412**Fax:** 805-445-4904**e-mail:** DANPEREZ@ACHECKAMERICA.COM**File Submitted:** November 07, 2011 2:30 PM (12:00 PM cutoff)**Clock Begins:** November 08, 2011 8:30 AM**File Closed:** November 09, 2011 2:27 PM**File Modified:** November 21, 2011 8:40 AM

All Times are PST

Investigation Summary for : GARY L. SMITH**Q** - Specific area that may require review

REPORT COMPONENT / NAME(S)	INVESTIGATIVE SOURCE	COUNT	COMPLETION STATUS		
			Completed	Verification Required	Final Review

REDACTED**Q**



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Call Direct: 951-750-1501
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Fax Direct: 951-750-1301

Confidential Background Report

Report Subject: **GARY L. SMITH**
File Number: **WA01333351**

Under the terms of this agreement, this report is submitted with the understanding that it is to be held in strict confidence. Pre and Post notification requirements under the FCRA are required. If any information contained within the report is used for making an Adverse Action, please discuss the report with the subject prior to taking action. If the applicant disputes the information within this report, have the applicant contact A-Check America directly WITHIN 60 DAYS.

REPORT SUMMARY ENDS

EXHIBIT B

Gary Smith		Candidate ID	329434	E-Mail Address	REDACTED	Name	REDACTED	Source	Harbor Freight Career Portal	Created	9/21/2011
<div> <div> Candidate Actions </div> </div>											
Job ID	Job Name	Status	Location	Hiring Manager	Recruiters	Created	Days Open	Applied	# of Positions		
5778	Real Warehouse Associate	Open	0373-HUNTINGTON PARK, CA	0373-01 Store Manager	<input checked="" type="checkbox"/>	9/21/2011	321	134	5		
<div> <div> Job Order Actions </div> </div>											
<div> <div> Job Order </div> <div> <div> Job Order Details </div> <div> Description </div> <div> State </div> <div> Qualifications </div> <div> Fulfillment Team </div> <div> Sourcing </div> <div> Resume Relevance </div> <div> Application </div> <div> Activity Log </div> <div> Notes </div> <div> Applicants </div> <div> New Candidates (0) </div> <div> Interview (-2) </div> <div> Screening (0) </div> <div> Offer (0) </div> <div> Hire (0) </div> <div> Onboarding (1) </div> <div> Rejected / Offer (-140) </div> </div> </div>											

EXHIBIT B

1 Michael A. Caddell (SBN 249469)
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4 Craig C. Marchiando (SBN 283829)
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10 Leonard A. Bennett (*pro hac vice* filed)
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14 *Attorneys for Plaintiff*

15 **UNITED STATES DISTRICT COURT**
16 **CENTRAL DISTRICT OF CALIFORNIA**
17 **WESTERN DIVISION**

17 **GARY L. SMITH, JR., on behalf of**)
18 **himself and all others similarly**)
19 **situated,**)

19 **Plaintiff,**

20 **vs.**

21 **HARBOR FREIGHT TOOLS USA,**)
22 **INC.,**)

22 **Defendant.**

2:13-cv-06262- JFW _____

PLAINTIFF GARY L. SMITH, JR.'S
RULE 26(a)(1) DISCLOSURES

24 **TO: ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD HEREIN:**

25 Plaintiff GARY L. SMITH, JR., hereby makes the following disclosures. These
26 disclosures are the results of preliminary investigation, and PLAINTIFF expressly
27
28

1 reserves the right to supplement, modify, and correct these disclosures during the
2 course of litigation.

3 **FED. R. CIV. P. 26(a)(1)(A)(i).** The name and, if known, the address and
4 telephone number of each individual likely to have discoverable information along
5 with the subjects of that information that the disclosing party may use to support its
6 claims or defenses, unless solely for impeachment;

7 **DISCLOSURE:** Plaintiff hereby discloses the following individuals who likely
8 have discoverable information and Plaintiff may use to support his claims:
9

- 10 1. Gary A. Smith, c/o Devin H. Fok, Esq. The Law Offices of Devin H. Fok,
11 P.O. Box 7165, Alhambra, CA 91802-7165; 310-430-9933.

12 **FED. R. CIV. P. 26(a)(1)(A)(ii).** A copy – or a description by category and
13 location – of all documents, electronically stored information, and tangible things that
14 the disclosing party has in its possession, custody, or control and may use to support
15 its claims or defenses, unless the use would be solely for impeachment.

16 **DISCLOSURE:** Plaintiff hereby provides the following supplemental
17 production and is attached herein as Exhibit “1.”

18 **FED. R. CIV. P. 26(a)(1)(A)(iii).** A computation of each category of damages
19 claimed by the disclosing party.

20 **DISCLOSURE:** Plaintiff hereby discloses his computation of damages:
21

- 22 1. Actual Damages (Named Plaintiff Gary Smith Only):

23 a. Loss of Wages: Approximately \$10/hour and part time of
24 approximately 25 hours a week = \$13,000 a year.

25 b. Mental and emotional distress: \$20,000.

26 2. Attorney’s Fees and Punitive Damages to be determined by the court.

27 3. Statutory Penalties On Behalf of the Class:
28

1 a. Civil Penalties Pursuant to 15 U.S.C. § 1681n(b): Between \$100-
2 \$1,000 per violation.

3 b. Civil Penalties Pursuant to Cal. Civ. Code §1785.20.5: Between
4 \$100 to \$5,000 per violation.

5 4. Punitive damages according to proof.

6 **FED. R. CIV. P. 26(a)(1)(A)(iv).** For inspection and copying as under Rule 34,
7 any insurance agreement under which an insurance business may be liable to satisfy
8 all or part of a possible judgment in the action or to indemnify or reimburse for
9 payments made to satisfy the judgment.

10 DISCLOSURE: Plaintiff does not have personal knowledge of any applicable
11 insurance agreement relevant to his case to satisfy any judgment in the action other
12 than those already disclosed in Defendant's Rule 26 disclosures.

13 Date: December 20, 2013

14 **CADDELL & CHAPMAN**

15
16 /s/Michael A. Caddell
17 Michael A. Caddell (SBN 249469)
18 mac@caddellchapman.com
19 Cynthia B. Chapman (SBN 164471)
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Leonard A. Bennett (*pro hac vice* filed)
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Attorneys for Plaintiff

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CERTIFICATE OF SERVICE

I hereby certify that on December 20, 2013, I electronically filed the foregoing initial disclosures with the Clerk of the Court for the Central District of California using the CM/ECF system. The CM/ECF system sent notice of this filing to the following Counsel of Record:

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Attorneys for Defendant
HARBOR FREIGHT TOOLS USA, INC.

/s/ Michael A. Caddell
Michael A. Caddell

EXHIBIT C

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10 Attorneys for Defendant
11 HARBOR FREIGHT TOOLS USA, INC.

12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**
14

15 GARY L. SMITH, JR., on behalf of
16 himself and all others similarly situated,

17 Plaintiff,

18 v.

19 HARBOR FREIGHT TOOLS USA,
20 INC.

21 Defendant.
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Case No. CV13-6262 JFW (VBKx)

**DECLARATION OF EVAN R.
MOSES IN SUPPORT OF
DEFENDANT'S OPPOSITION TO
PLAINTIFFS' MOTION FOR CLASS
CERTIFICATION**

Date: January 13, 2014

Time: 1:30 pm

Complaint Filed: August 27, 2013

Judge: Hon. John F. Walters

DECLARATION OF EVAN R. MOSES

I, Evan R. Moses, declare as follows:

1. I am an attorney at law licensed to practice before this court and all courts of the state of California. I am a shareholder in the law firm of Ogletree, Deakins, Nash, Stewart, & Smoak, P.C., attorneys of record for Defendants. I have personal knowledge of the matters set forth in this declaration, and if called to testify, I would and could testify competently to those matters.

2. On December 2, 2013, I telephonically conferred with Plaintiff's counsel regarding a number of substantive and procedural matters. Among these, Plaintiff's counsel indicated that they intended to file a motion for class certification in the instant action. Our conversation did not address the merits of Plaintiff's anticipated motion or the nature of the briefing that would be directed to substantive issues. We simply discussed the fact that Plaintiff intended to file their motion.

3. I declare under penalty of perjury pursuant to the laws of the United States of America that the foregoing is true and correct.

Executed this 23rd day of December, 2013, at Los Angeles, California.

/s/ Evan R. Moses
Evan R. Moses